

## **REMARKS**

### **I. Introduction**

With the addition of new claims 15-40, claims 1-5 and 15-40 are pending in the present application. In view of the following remarks, it is respectfully submitted that all of the presently pending claims are allowable, and reconsideration is respectfully requested.

### **II. Rejection of Claims 1-5 Under 35 U.S.C. 102(b)**

Claims 1-5 were rejected under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 5,433,721 ("Hooven et al."). Applicants respectfully submit that Hooven et al. do not anticipate claims 1-5 for the following reasons.

Claim 1 relates to an electromechanical driver, flexible shaft, and surgical attachment assembly. Claim 1 states that the assembly includes a flexible shaft including a flexible sheath having a first end and a second end, and having disposed therein at least one flexible torque translating member and at least one electrical connection wire. Claim 1 also recites that the at least one flexible torque translating member is coupleable to a surgical attachment at said first end of said sheath, and to a driver element at said second end. Claim 1 also recites that the surgical attachment includes at least one selectively moveable element, said moveable element being coupled to said torque translating member such that said moveable element may be selectively moved in correspondence with the provision of a torque along said torque translating member. Claim 1 also recites that the surgical attachment includes at least one selectively activateable sensor mechanism for sensing and providing data concerning at least one feature of the environment surrounding said attachment when selectively activated by an activating signal. Claim 1 further recites that the surgical attachment includes at least one transmitter and receiver mechanism coupled to the sensor mechanism and the at least one electrical connection wire for receiving said activating signal, and transmitting said sensor data along said connection wire. Claim 1 further recites that the driver element includes a torque generating mechanism coupled to said torque translating member, and a processor element coupled to said at least one electrical connection wire for sending an activating signal, receiving said sensor data, analyzing same, and controlling the application of said torque by said torque generating mechanism in accordance with said analysis.

Applicant respectfully maintains that claim 1 is not anticipated by Hooven et al. for at least the reason that Hooven et al. does not disclose or even suggest all of the limitations recited in claim 1. For example, Hooven et al. do not disclose or even suggest at least one selectively activateable sensor mechanism for sensing and providing data concerning at least one feature of the environment surrounding said attachment, as recited in claim 1. For example, the Specification states at page 10, lines 1-4, that "[a] lock out feature

is maintained by the processor unit until such time as the surgeon causes the processor ... in the handle to query the tissue proximity sensor and the pulse oximeter sensor in the attachment to determine if the tissues to be stapled together form a complete contiguous ring...".

Hooven et al. describe that "[t]he head 205 of the stapler contains electronic sensors which detect motion of the staple forming and tissue cutting components located within the head." Col. 7, lines 49-51. Hooven et al. also state that "[i]nductive sensor 215 will sense the number of times the magnetic media 216, attached to the power nut, passes in close proximity to it." Col. 8, lines 29-31. The electronic sensor contained in the head 205 of the stapler does not sense and provide data concerning at least one feature of the environment surrounding an attachment, but rather it detects motion of the staple forming and tissue cutting components located within the head. Furthermore, the inductive sensor 215 also does not sense and provide data concerning at least one feature of the environment surrounding an attachment, but rather senses a number of rotations of a driver element by sensing the number of times the magnetic media 216, attached to the power nut, passes in close proximity to it.

To anticipate a claim, each and every element as set forth in the claim must be found in a single prior art reference. Verdegaal Bros. v. Union Oil Co. of Calif., 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987). Furthermore, "[t]he identical invention must be shown in as complete detail as is contained in the . . . claim." Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989). That is, the prior art must describe the elements arranged as required by the claims. In re Bond, 910 F.2d 831, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990). As more fully set forth above, it is respectfully submitted that Hooven et al. does not disclose, or even suggest, at least one selectively activateable sensor mechanism for sensing and providing data concerning at least one feature of the environment surrounding said attachment as recited in claim 1. It is therefore respectfully submitted that Hooven et al. do not anticipate claim 1.

As for claims 2-5, which depend from claim 1 and therefore include all of the limitations of claim 1, it is respectfully submitted that Hooven et al. do not anticipate these dependent claims for at least the same reasons given above in support of the patentability of claim 1, and Applicant respectfully requests that the rejection of these claims be withdrawn also.

### **III. New Claims**

Applicants have added new claims 15-40. It is respectfully submitted that all of the new claims are allowable. For instance, all of the new claims 15-29 include, either directly or indirectly, the feature of a surgical attachment that includes a sensor mechanism for sensing and providing data corresponding to at least one feature of an environment surrounding the surgical attachment, which as set forth above in connection with Figure 1, is not disclosed or suggested by Hooven et al. Furthermore, all of the new claims 30-40

include, either directly or indirectly, the feature of a surgical stapler that includes a sensor mechanism for sensing and providing data corresponding to a condition of a section of tissue disposed between the first and second jaws of the stapler, which is not disclosed or suggested by Hooven et al. Therefore, for at least these reasons, Applicants maintain that new claims 15-40 are allowable.

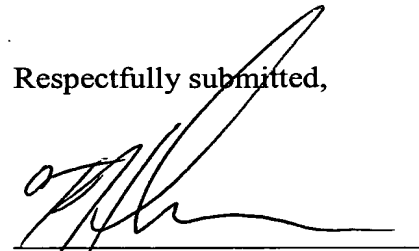
**IV. Conclusion**

It is therefore respectfully submitted that all of the presently pending claims are allowable. All issues raised by the Examiner having been addressed, an early and favorable action on the merits is earnestly solicited.

Dated: March 25, 2005

By:

Respectfully submitted,



Thomas C. Hughes  
Reg. No. 42,674

**\*26646\***

**26646**

PATENT TRADEMARK OFFICE

KENYON & KENYON  
One Broadway  
New York, New York 10004  
(212) 425-7200